



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

MAR 23 2012

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article Number: 7005 3110 0000 5954 5942

Stephen V. Altieri
Town Administrator
Town of Mamaroneck
740 West Boston Post Road
Mamaroneck, New York 10543

Re: Administrative Order CWA-02-2012-3025
Town of Mamaroneck
SPDES Permit No. NYR20A215


Dear Mr. Altieri:

The United States Environmental Protection Agency ("EPA"), Region 2, has made a finding that the above-named facility, Town of Mamaroneck ("Mamaroneck"), is in violation of the Clean Water Act (33 U.S.C. §1251 et seq) ("the Act") for effluent violations as described in the findings to this Order. Enclosed are two (2) originals of this ORDER, issued pursuant to Sections 309 and 308 of the Act, which detail the findings.

Please acknowledge receipt of this ORDER on one of the originals and return it by mail in the enclosed envelope. Failure to comply with the enclosed ORDER may subject the facility to civil/criminal penalties pursuant to Section 309 of the Act. Failure to comply with this ORDER shall also subject the facility to ineligibility for participation in work associated with Federal contracts, grants or loans.

If you have any questions regarding this Order, please contact Mr. Jerry Ciotola, Environmental Engineer, at (212) 637-4223.

Sincerely,


Dore LaPesta, Director
Division of Enforcement and Compliance Assistance

Enclosures

cc: Joe DiMura, P.E., Director, Bureau of Water Compliance Programs, NYSDEC
Patrick Ferracane, Env. Program Specialist, Region 3, NYSDEC

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF:

Town of Mamaroneck
740 West Boston Post Road
Mamaroneck, New York 10543

SPDES Permit No. NYR20A215

Respondent

Administrative Order for Compliance
pursuant to Section 309(a) of the Clean
Water Act, 33 U.S.C. § 1319(a)

ADMINISTRATIVE ORDER

CWA-02-2012-3025

STATUTORY AUTHORITY

The following Findings of Violation and Order for Compliance ("Order") are made and issued pursuant to Sections 308(a) and 309(a) of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1318(a) and 1319(a). This Authority has been delegated by the Administrator of the United States Environmental Protection Agency ("EPA") to the Regional Administrator, EPA Region 2 and further delegated to the Director of the Division of Enforcement and Compliance Assistance, Region 2, EPA.

1. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), makes it unlawful for any person to discharge any pollutant from a point source to waters of the United States, except, inter alia, with the authorization of, and in compliance with, a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.
2. Section 402 of the CWA, 33 U.S.C. § 1342, authorizes the Administrator of EPA to issue a NPDES permit for the discharge of any pollutant, or combination of pollutants subject to certain requirements of the CWA and conditions which the Administrator determines are necessary. The New York State Department of Environmental Conservation ("NYSDEC") is the agency with the authority to administer the federal NPDES program in New York pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA. Additionally, under the authority granted to the NYSDEC by the EPA under Section 402(b) of the CWA, 33 U.S.C. § 1342(b), a State Pollutant Discharge Elimination System ("SPDES") permit is required to be issued to facilities by the NYSDEC for the discharge of pollutants from said facilities from a point source to a navigable water of the United States.
3. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), sets forth requirements for the issuance of NPDES permits for the discharge of storm water. Section 402(p)(2)(D) of the CWA, 33 U.S.C. § 1342(p)(2)(D), requires an NPDES permit to be issued for the discharge of storm water from a Municipal Separate Storm Sewer ("MS4") serving populations of 100,000 or more but less than 250,000.

4. Section 402(p)(3)(B) of the CWA, 33 U.S.C. § 1342(p)(3)(B), requires that NPDES permits for discharges from a MS4 shall include a requirement to effectively prohibit non-storm water discharges into the storm sewers and shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.

5. Pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), EPA promulgated regulations at 40 C.F.R. § 122.26 setting forth the NPDES permit requirements for storm water discharges, including the following:

- 40 C.F.R. § 122.26(b)(16)(ii) defines "small municipal separate storm sewer system," in part, as not defined as "large" or "medium" municipal separate storm sewer systems;
- 40 C.F.R. § 122.26(b)(7)(i) defines "medium municipal separate storm sewer system," in part, as being located in an incorporated place with a population of 100,000 or more but less than 250,000;
- 40 C.F.R. §§ 122.26(a)(1)(iv) and 122.26(d) require the operator of a discharge from a medium MS4 to apply for a jurisdiction-wide or system-wide permit;
- 40 C.F.R. § 122.26(b)(3) defines "incorporated place," in part, as a city, town, township, or village that is incorporated under the laws of the State in which it is located.

6. 40 C.F.R. § 122.26(b)(8), defines an MS4 as a "conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) owned or operated by a Town, town, borough, county, parish, district, association, or other public body (created by State law).....that discharges into waters of the United States; (ii) designed or used for collecting or conveying stormwater; (iii) which is not a combined sewer; and (iv) which is not part of a Publicly Owned Treatment Works..."

7. NYSDEC issued SPDES General Permit for Storm Water Discharges from MS4s (GP-0-10-002) ("Permit") on April 29, 2010. The Permit became effective on May 1, 2010 and expires on April 30, 2015. The Permit supersedes the previous SPDES permit (GP-0-08-002), which became effective on May 1, 2008 and expired on April 30, 2010, and SPDES permit (GP-02-02), which became effective on January 8, 2003 and expired on January 8, 2008. SPDES permit (GP-02-02) was administratively extended until April 15, 2008, when SPDES permit (GP-0-08-002) was issued.

8. Part VII.A.3.f. of the Permit requires the MS4 to prohibit through law, ordinance, or other regulatory mechanism, illicit discharges into the small MS4 and implement appropriate enforcement procedures and actions.

9. Part VII.A.3.g. of the Permit requires the MS4 to develop and implement a program to detect and address non-stormwater discharges, including illegal dumping, to the small MS4 in accordance with current assistance and guidance documents from the State and EPA.

FACTUAL BACKGROUND

1. The Town of Mamaroneck is a municipal corporation chartered under the laws of the State of New York, and as such, the Permittee is a "person," as that term is defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2, and is an "incorporated place" as that term is defined in 40 C.F.R. § 122.26(b)(3).
2. Permittee owns/operates the MS4, located in the incorporated Town of Mamaroneck, Westchester County, New York and is an owner or operator within the meaning of 40 C.F.R. § 122.2.
3. The MS4 in the Town of Mamaroneck is a small MS4 located in a urbanized area within the meaning of 40 C.F.R. § 122.26(b)(16)(ii) and 40 C.F.R. § 122.32(a)(1). NYSDEC included the Town of Mamaroneck as a regulated MS4 through designation criteria developed by the NPDES permitting authority (NYSDEC).
4. At all times relevant to this Order, the MS4 was a "point source" of a "discharge" of "pollutants," as defined by Section 502 of the CWA, 33 U.S.C. § 1362. The MS4 discharges storm water to receiving waters of all areas, except agricultural lands, within the corporate boundaries of the Town of Mamaroneck, served by an MS4 owned or operated by Permittee. The Long Island Sound and other receiving waters are considered "waters of the United States" within the meaning of Section 502 of the CWA, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2.
5. The Town of Mamaroneck submitted a Notice of Intent to NYSDEC on March 9, 2003 seeking coverage under the SPDES General Permit GP-02-02. The NYSDEC issued SPDES Permit NYR20A215 for the MS4 ("the MS4 permit") under Section 402(p) of the CWA, 33 U.S.C. § 1342(p). An MS4 General Permit was issued by NYSDEC on March 27, 2003, expired January 8, 2008, and was administratively extended until the issuance of a new general permit on May 1, 2010 under GP-0-10-002. At all relevant times, the Town of Mamaroneck was authorized to discharge from all portions of the MS4 owned or operated by the Town of Mamaroneck to waters of the United States, only in accordance with Permittee's Storm Water Management Program, specific terms and conditions of the MS4 permit, and associated Storm Water Discharge Regulations set forth in 40 C.F.R. § 122.26.
6. SPDES General Permit (GP-0-10-002) was the effective permit at the time of the inspection.
7. The MS4 General Permit (GP-02-02) required that Permittees develop an initial Storm Water Management Program ("SWMP") prior to March 10, 2003, and fully implement the SWMP no later than January 8, 2008. As part of a SWMP, Permittees under GP-02-02 were required to develop, implement and enforce a program to detect and eliminate illicit discharges under Illicit Discharge Detection and Elimination (Part IV.3 of the permit).
8. The Town of Mamaroneck MS4 discharges storm water into one or more receiving waters that appear on the CWA § 303(d) list or for which a Total Maximum Daily Load ("TMDL") has been established. Mamaroneck Harbor has been designated as an impaired water body with floatables and pathogens the primary pollutants of concern. Therefore, Mamaroneck is required to meet additional improvement and minimum control measures pursuant to Part IX C. Pathogen Impaired Watershed MS4 for New York State's General Permit for Stormwater Discharges from MS4s (GP-0-10-002).

9. MS4 General Permit (GP-0-10-002) includes all small municipal separate storm sewer systems within the meaning of 40 C.F.R. § 122.26(b)(16).

10. The Town of Mamaroneck applied for and was issued SPDES General Permit NYR20A215 for the MS4 ("the MS4 permit") under Section 402(p) of the CWA, 33 U.S.C. § 1342(p) on June 3, 2003.

11. At all times relevant to this Order, the Town of Mamaroneck was authorized to discharge from all portions of the MS4, owned or operated by the Town of Mamaroneck, to waters of the United States, only in accordance with specific terms and conditions of the MS4 permit, and associated Storm Water Discharge Regulations set forth in 40 C.F.R. § 122.26.

12. On September 19, 26 and October 17, 2007, EPA conducted MS4 compliance inspections of the Town of Mamaroneck pursuant to Section 308 of the CWA, 33 U.S.C. § 1318 (hereafter the "MS4 inspection"). Based on these inspections, EPA identified discharges from the MS4 which appeared to contain sanitary sewage. As a result of those observations, it was determined that a follow-up sampling inspection should be performed.

13. On September 30, 2010, and October 19, 2011, EPA conducted wet weather sampling inspections at outfalls and catch basins within the Town of Mamaroneck, specifically sampling for alkalinity, turbidity, fecal coliform and total coliform. The results of that sampling were used to determine whether storm sewer discharges are contributing to water quality impairments and to determine if coliform levels in the storm sewer discharges are substantially higher than water quality standards or ambient levels. Sampling verified that an outfall, at the location identified below, was discharging in excess of the NY Water Quality Standard of either 10,000 MPN/100ml for total coliform, and/or 2,000 MPN/100ml for fecal coliform.

The results of EPA's sampling inspection are listed below:

September 30, 2010 Sampling

<u>Location</u>	<u>Coliform (MPN/100ml)</u>	
	<u>Fecal</u>	<u>Total</u>
Fenbrook Subdivision (Winding Brook)	13,000 MPN/100ml	24,000 MPN/100ml

14. The wet weather sampling inspections conducted by EPA on September 30, 2010, indicated that water quality standards for total and fecal coliforms were exceeded at the above location. Ambient sampling conducted on October 19, 2011 indicated that fecal coliform results were exceeded, supporting evidence that there is a high potential for illicit sanitary connections to storm sewers which discharge into Mamaroneck Harbor.

15. The Town of Mamaroneck developed an initial SWMP, prior to March 10, 2003, but failed to fully implement the plan by the January 8, 2008 deadline, and failed to implement a SWMP ensuring that future discharges do not contribute to a violation of applicable water quality standards. Based upon the field observations conducted by EPA in September and October 2007, and sampling inspections conducted in September 30, 2010, and October 19, 2011 by the EPA Monitoring and Assessment Branch, EPA determined that the Town of Mamaroneck was in noncompliance with the MS4 permit

by failing to fully implement a comprehensive illicit detection and elimination program required by the MS4 permit by January 8, 2008, as part of its SWMP.

16. The Town of Mamaroneck's failure to comply fully with the requirements of the MS4 permit are violations of Section 301(a) of the CWA, 33 U.S.C. § 1301(a), as well as the permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

17. The MS4 permit identified Mamaroneck Harbor as an impaired water-body for pathogens and floatables. The Town of Mamaroneck MS4 discharges to Mamaroneck Harbor contribute to violations of applicable water quality standards for pathogens, a pollutant of concern.

18. The Town of Mamaroneck has failed to develop, implement, enforce and effectively prohibit illicit discharges into the storm sewer system and implement appropriate enforcement procedures as required under Permit Number GP-02-02, GP-0-08-002, and GP-0-10-002 (the current MS4 permit). Specifically, Part VIIA.3 Illicit Discharge Detection and Elimination (IDDE)-SWMP Development/Implementation required the Town of Mamaroneck to implement paragraphs f. (prohibit illicit discharges into the MS4) and g. (develop and implement a program to detect and address non-stormwater discharges), which they failed to complete.

19. On the basis of the Findings cited in the Paragraphs 1-18 above, the Permittee is in violation of Sections 301 and 308 of the CWA, 33 U.S.C. §§ 1311 and 1318 and applicable implementing regulations.

ORDERED PROVISIONS

1. Based on the Findings of Fact and Findings of Violation set forth above, and pursuant to the authority of Sections 308(a) and 309(a) of the CWA, 33 U.S.C. §§ 1318(a) and 1319(a), Permittee is hereby ORDERED to take the actions described below.

2. Immediately upon receipt of the original copies of this Order, a responsible official of the Town of Mamaroneck shall complete and sign the acknowledgment of receipt of one of the originals of the Order and return said original to the Chief, Water Compliance Branch, Division of Enforcement and Compliance Assistance, in the enclosed envelope to the address listed below.

3. The Town of Mamaroneck shall prepare, implement and enforce a Stormwater Management Program pursuant to the requirements of Part IV of the NY State DEC SPDES General Permit for Stormwater Discharges from MS4 (GP-0-10-002). The Stormwater Management Program shall specifically address the identification of illicit connections to minimize discharges and sources of pathogens in the Town of Mamaroneck storm system.

4. The Town of Mamaroneck shall continue to conduct its track down program to identify and eliminate illicit connections and other potential sources of pathogens to the MS4.

5. The Town of Mamaroneck shall implement corrective work in accordance with the following schedule:

Item (Phase I)

To be completed no later than

Submit a Plan of Study

April 30, 2012

Submit quarterly progress reports to EPA and NYSDEC outlining all activities undertaken, results of verification sampling and costs associated with compliance with this Order.

June 30, 2012 and
every 3 months thereafter

Complete sampling, follow-up smoke and dye testing in areas where video inspection indicated a problem.

September 30, 2012

Item (Phase II)

To be completed no later than

Submit an Engineering Plan

October 30, 2012

Prepare Plans & Specifications, Bid Documents, award contract to lowest bidder

November 30, 2012

Item (Phase III)

To be completed no later than

Complete all work necessary pursuant to the Plan to eliminate illicit sanitary connections to the Town of Mamaroneck's storm water system.

September 30, 2013

Complete outfall sampling to verify elimination of illicit sanitary connections to storm sewer system.

November 30, 2013

Submit final report to EPA and NYSDEC summarizing all activities taken to come into compliance.

June 30, 2013

6. Any documents to be submitted by the Town of Mamaroneck as part of this Order shall be sent by certified mail or its equivalent and shall be signed by an authorized representative of the respective entity (see 40 CFR §122.22), and shall include the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true,

accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

7. The Town of Mamaroneck shall continue to submit all reports required by the SPDES General Permit for Storm Water Discharges from MS4.

8. All information required to be submitted by this Order shall be sent by certified mail or its equivalent to the following addresses:

Douglas McKenna, Chief
Water Compliance Branch
Division of Enforcement and Compliance Assistance
United States Environmental Protection Agency, Region 2
290 Broadway, 20th Floor
New York, NY 10007-1866

Joseph DiMura, P.E.
Director, Bureau of Water Compliance Programs
Division of Water
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-3506

Compliance with the terms of this Order shall not relieve Permittee of liability for, or preclude EPA from, initiating an administrative or judicial enforcement action to recover penalties for any violations of the CWA, or to seek additional injunctive relief, pursuant to Section 309 of the CWA, 33 U.S.C. § 1319. Issuance of an Administrative Order shall not be deemed an election by EPA to forego any civil or criminal actions which would seek penalties, fines, or other appropriate relief under the CWA.

This Order shall become effective upon the date of execution by the Director, Division of Enforcement and Compliance Assistance.

Compliance with the terms of this Order shall not relieve Permittee of liability for, or preclude EPA from, initiating an administrative or judicial enforcement action to recover penalties for any violations of the CWA, or to seek additional injunctive relief, pursuant to Section 309 of the CWA, 33 U.S.C. § 1319. Issuance of an Administrative Order shall not be deemed an election by EPA to forego any civil or criminal actions which would seek penalties, fines, or other appropriate relief under the CWA.

This Order shall become effective upon the date of execution by the Director, Division of Enforcement and Compliance Assistance.

Dated: MARCH 23, 2012

Signed: _____

Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF:

Town of Mamaroneck
740 West Boston Post Road
Mamaroneck, New York 10543

SPDES Permit No. NYR20A215

Respondent

Administrative Order for Compliance pursuant
to Section 309(a) of the Clean Water Act, 33
U.S.C. §1319

ADMINISTRATIVE ORDER

CWA-02-2012-3025

**ACKNOWLEDGMENT OF RECEIPT OF
ADMINISTRATIVE COMPLIANCE ORDER**

I, _____, an official of Town of Mamaroneck

with the title of, _____, do hereby acknowledge the receipt of copy of the
ADMINISTRATIVE ORDER, Town of Mamaroneck **CWA-02-2012-3025**.

DATE: _____

SIGNED: _____



Town of
Mamaroneck
Border

Sample
location #2

